

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**G.S. by and through his parents and next
friends, BRITTANY and RYAN
SCHWAIGERT, S.T. by and through
her mother and next friend, EMILY
TREMEL; J.M., by and through
her mother and next friend,
KIMBERLY MORRISE; and on
behalf of those similarly situated,**

Plaintiffs,

v.

**GOVERNOR BILL LEE, in his official
capacity as GOVERNOR OF TENNESSEE,
and SHELBY COUNTY, TENNESSEE,**

Defendants.

Case 2:21-cv-02552-SHL-atc

**MOTION FOR STAY PENDING APPEAL
OF DEFENDANT GOVERNOR BILL LEE**

Defendant Bill Lee, Governor of the State of Tennessee (the “Governor”), in his official capacity, by and through the Office of the Tennessee Attorney General, files this motion for stay pending appeal. On September 17, 2021, the Court issued a preliminary injunction to enjoin the Governor from enforcing Executive Order 84 (the “EO”),¹ which grants parents or guardians the right to opt their children out of any imposed mask mandate on a student while at school or a

¹ On September 30, 2021, the Governor published Executive Order 89 (EO 89). EO 89 extends the effect of the EO through 11:59 p.m., Central Time, on November 5, 2021. The Governor shall comply with this Court’s preliminary injunction while it remains in effect.

school function. (ECF 62, PageID 1240-41, 1267.) The Governor has now appealed that order. (ECF 66, PageID 1322.)

Pursuant to Fed. R. Civ. P. 62(d), the Court should stay its grant of a preliminary injunction while the Governor’s appeal of the injunction remains pending. In granting the preliminary injunction, the Court determined that the Governor could not exempt Local Education Agencies (“LEAs”) from implementing universal masking—the accommodation the Court considered was “the most reasonable approach.” (ECF 62, PageID 1254.) But by requiring the Governor to provide a specific reasonable accommodation as opposed to other available options, the Court exceeded its authority by substituting its own policy choices for those of the Governor. And the Court further compounded its error by misapplying relevant legal principles to conclude that Plaintiffs had standing to bring suit and were not subject to the exhaustion requirements of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 to 1445 (“IDEA”). In other words, the Court abused its discretion by relying on an erroneous legal standard and improperly applying the relevant law to find that Plaintiffs were entitled to a preliminary injunction, and the Court should stay the injunction pending the Governor’s appeal. In accordance with LR 7.2(a)(1), an accompanying memorandum of facts and law is filed herewith.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/James R. Newsom III
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CERTIFICATE OF CONSULTATION

Pursuant to LR 7.2(a)(1)(B), I, James R. Newsom III, counsel for the Governor, certify that I conferred with Bryce Ashby, counsel for Plaintiffs, regarding the relief requested in the motion by telephone on October 1, 2021. Plaintiffs' counsel informed me that he is opposed to the Governor's motion.

s/James R. Newsom III
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CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of October, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing report. Parties may access this filing through the Court's electronic filing system.

s/Robert W. Wilson
Robert W. Wilson
Assistant Attorney General